IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No.

WILMETTE PARK DISTRICT,

Petitioner,

vs.

NIGEL D. CAMPBELL, COLLECTOR OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 9567

WILMETTE PARK DISTRICT,
Plaintiff-Appellee,

vs.

NIGEL D. CAMPBELL, COLLECTOR OF INTERNAL REVENUE,
Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of September (it being the 1st day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-Seven and of the Independence of the United States of America, the 172nd year.

Present:

Honorable John P. Barnes, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. LaBuy, District Judge
Honorable Elwyn R. Shaw, District Judge
Honorable William H. Holly, District Judge
Roy H. Johnson, *Clerk.*
Thomas P. O'Donovan, *Marshal.*

Monday, September 29, 1947

Court met pursuant to adjournment

Present: Honorable William J. Campbell, Trial Judge

2 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

Eastern Division.

Wilmette Park District,
a Municipal corporation,
Plaintiff-Appellee,
vs.
Carter H. Harrison, Collector
of Internal Revenue,
Defendant-Appellant.
} No. 43 C 318

Be It Remembered, that, on to-wit, the 24th day of March, 1943, the above-entitled action was commenced by the filing of the following Complaint, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

---

26 And afterwards on, to-wit, the 2nd day of April, 1946 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice And Amended and Supplemental Complaint in words and figures, to-wit:

27 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

Eastern Division.

Wilmette Park District,
a Municipal Corporation,
Plaintiff

vs.

Nigel D. Campbell,
Collector of Internal Revenue,
Defendant

NOTICE.

To: J. Albert Woll
United States Attorney
for the Northern District of Illinois
United States Courthouse
Chicago, Illinois

Please Take Notice that on the morning of the 2nd day of April at the opening of court, or as soon thereafter as counsel can be heard, we shall appear before the Honorable Judge Campbell in the courtroom usually occupied by him and shall then and there ask leave to file instanter an Amended and Supplemental Complaint, copy of which is served upon you with this notice; at which time and place you may appear if you so see fit.

Henry J. Brandt
Attorney for Wilmette Park District
11 South LaSalle Street
Randolph 0220

Received a copy of the above and foregoing notice, together with a copy of the Amended and Supplemental Complaint, this 1st day of April, 1946.

J. Albert Woll
U. S. Attorney by E. Tillotson

28 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

AMENDED AND SUPPLEMENTAL COMPLAINT.

Wilmette Park District, a municipal corporation, plaintiff, brings this suit against Nigel D. Campbell, Collector of Internal Revenue, to recover the sums of $57.20, erroneously and unlawfully collected from the plaintiff as an Admissions Tax for the year 1941; $3979.43 erroneously and unlawfully collected from the plaintiff as an Admission Tax for the years 1942 to July 1944; $2103.30 erroneously and unlawfully collected from the plaintiff as an Admissions Tax for the year 1945, allegedly under authority of an Act of Congress known as the Admissions Tax Act (53 Stat. 189, as amended, Chap. 10, Title 26, USCA, Sec. 1700).

1. Jurisdiction of this Court is based upon Subdivision 5, Section 24 of the Judicial Code, as amended March 2, 1929, Chap. 488, Sec. 1, 45 Stat. 1475.

2. The defendant or his predecessor in office at all times hereinafter mentioned was and the defendant is the Collector of the United States internal revenue for the First District of Illinois, at Chicago, Illinois.

29 3. Plaintiff is a municipal corporation, organized and existing solely under and by virtue of the statutes of the State of Illinois (Illinois Revised Statutes, 1941 Sec. 256 et seq.) as an arm of the State in the operation of a park district within a territory practically co-terminus with the boundaries of the Village of Wilmette, in Cook County, Illinois.

4. Plaintiff is governed and its affairs are administered by a board of five commissioners, elected by vote of the people residing in the district. Through and by its board of commissioners, chosen by popular election, plaintiff has for many years operated and administered, and still operates and administers, a system of public parks and playgrounds and has, in conjunction therewith, during the summer months conducted a public bathing beach in one of such

parks upon and along the shore of Lake Michigan, in the shoal waters thereof.

5. To defray the expense of the operation of such outdoor bathing beach and in the exercise of the authority and power vested in it by the statutes of the State of Illinois, plaintiff has charged a fee to all persons desiring to make use of such public bathing beach, which fee is designed to cover the costs of policing the premises, maintaining a first aid station, showers and other bathing and sanitary facilities.

6. The fee charged by plaintiff for admission to the bathing beach is designed merely to cover the cost of operation and is not imposed by plaintiff for the purpose or in the expectation of realizing a profit or gain, and during the years 1941 to and including 1945 and in prior years the sums realized from the sale of admission tickets to such bathing beach have been insufficient to fully pay operating costs.

30 7. Plaintiff did not during the years 1941 to and including 1945, for which the admissions were collected, or in prior years collect from the purchasers of admission tickets to its bathing beach moneys over and above the face amount of the tickets, nor did plaintiff charge or collect the admissions tax alleged to have been imposed by the Admissions Tax Act (53 Stat. 189, as amended, Chap. 10, Title 26, USCA. Sec. 1700).

8. The admission tickets sold by plaintiff during the year 1941 and theretofore did not bear any statement or legend that any part of the purchase price represented a tax due the Government of the United States, and no part of the proceeds of the sale was allocated to or set aside by plaintiff for payment of any taxes purportedly due the Government of the United States.

9. On or about July 16, 1942 plaintiff seasonably filed with the defendant its claim for a refund in the sum of $57.20; on or about June 28, 1945 plaintiff filed with the defendant its claim for refund in the sum of $3979.43; on or about December 18, 1945 plaintiff seasonably filed with the defendant its claim for a refund in the sum of $2103.30,

but in each case it received notification from the Commissioner of Internal Revenue that its claim for refund of the tax and penalty assessment paid under protest was denied.

10. All of the acts, rulings and determinations of the defendant and the Commissioner of Internal Revenue were unlawful and void because:

(a) Plaintiff is a municipal or public corporation, created by the State of Illinois and constituted to act as an arm of that State in the performance of its authorized governmental functions. One of plaintiff's statutory powers is that of operating and maintaining bathing beaches for public use. The power of Congress to levy and collect taxes for the Federal Government is defined and limited by the Constitution of the United States and does not include the power to tax the governmental activities of a State or of municipal corporations created by and under the laws of such State; nor can the Congress of the United States impose upon the duly elected commissioners of such an independent governmental body the duty to act as tax collection agencies of the Federal Government;

(b) Since Congress does not have the power to tax a municipal corporation, it does not have the power to assess penalties against a municipal corporation for failure to collect a tax illegally levied;

(c) If the Act of Congress commonly known as the "Admissions Tax Act," as constituted and enforced by defendant, is an attempt by the Federal Government to tax the local governmental activities of the creature of a sovereign state, or if it is an attempt to impose upon the commissioners constituting the governing board of the plaintiff the duty of acting as tax collectors for the Federal Government, in either case it is in contravention of the Constitution of the United States and, therefore, void and of no effect.

Wherefore, plaintiff prays judgment or decree upon the facts and for the principal sum of $6139.93, with interest at 6% per annum from the respective dates of payment until

id, together with its reasonable costs and disbursements, d for such other and further relief in the premises as may just.

Wilmette Park District
By Henry T. Brandt
Its Attorney

ppenhusen, Johnston
ompson & Raymond
Of Counsel
South LaSalle Street
icago 3, Illinois
ndolph 0220

And afterwards on, to-wit, the 20th day of May, 1946 came the Defendant by his attorneys and filed in the erk's office of said Court his certain Answer To Amended nd Supplemental Complaint in words and figures follow-g, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

ANSWER TO AMENDED AND SUPPLEMENTAL COMPLAINT.

For answer to the amended and supplemental complaint ed herein, defendant states as follows:

First Defense.

The complaint does not state a claim on which relief can granted.

Second Defense.

I.

Answering paragraph 2, defendant admits that he was the llector of Internal Revenue for the First District of inois, at Chicago, Illinois, and has been since January 1945; that Carter H. Harrison was collector of Internal

Revenue for the First District of Illinois, at Chicago, Illinois, from August 21, 1933 through December 31, 1944; but denies every other allegation therein.

II.

Answering paragraph 3, defendant admits that plaintiff is organized and existing under the statutes of the State of Illinois embodied in Illinois Revised Statutes, 1941, Sec. 256, *et seq.*, within a territory practically coterminous with the boundaries of the Village of Wilmette, in Cook County, Illinois; but denies every other allegation therein for lack of knowledge or information sufficient to form a belief.

40

III.

Answering paragraphs 4, 5 and 6, defendant admits that during the summer months the plaintiff conducted a bathing beach along the shores of Lake Michigan and that it has charged a fee to all persons desiring to make use of such bathing beach; but denies every other allegation therein for lack of knowledge or information sufficient to form a belief.

IV.

Answering paragraphs 7 and 8, defendant denies the allegations thereof for lack of knowledge or information sufficient to form a belief.

V.

Answering paragraph 9, defendant admits that on July 17, 1942, the plaintiff filed a claim for refund with the United States Collector of Internal Revenue for $57.20; that on June 29, 1945, the plaintiff filed with the defendant a claim for refund of $3,979.43; that said claim for $3,979.43 was denied by the United States Commissioner of Internal Revenue; and that on December 19, 1945, the plaintiff filed a claim for refund with the defendant of $2,103.30; but denies every other allegation therein.

VI.

Defendant denies the allegations of paragraph 10.

Wherefore, defendant prays that he have judgment against the plaintiff for costs and all other proper relief.

J. Albert Woll
J. Albert Woll,
United States Attorney,
Attorney for Defendant.

41 State of Illinois }
County of Cook } ss.

George L. Benas, being first duly sworn on oath deposes and says that he is employed as Clerk in the office of the United States Attorney for the Northern District of Illinois; that on the 20th day of May, A. D. 1946, he placed a copy of the foregoing Answer in a Government franked envelope addressed to the following:

Mr. Henry J. Brandt
Poppenhusen, Johnston, Thompson & Raymond
11 South LaSalle Street
Chicago, Illinois

and that he placed said envelope, so addressed and containing said copy of the foregoing Answer in the mail chute located in the United States Court House, Chicago, Illinois, on said date.

George L. Benas

Subscribed And Sworn to before me this 20th day of May, A. D. 1946.

(Seal) Bernice A. Tallmadge
Notary Public

50 And afterwards on, to-wit, the 4th day of December, 1946 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Motion For Judgment in words and figures following, to-wit:

51 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

MOTION FOR JUDGMENT.

The defendant respectfully moves the Court for judgment in favor of the defendant for the reasons that under the pleadings, the evidence and the law:

1. The amount paid to the plaintiff as admission to the plaintiff's beach is subject to the tax imposed by Section 1700 of the Internal Revenue Code.
2. The plaintiff owes the amount of said taxes under the provisions of Section 1718 of the Internal Revenue Code.
3. Sections 1700 and 1718 of the Internal Revenue Code as applied to the plaintiff herein are constitutional.
4. The determination of the Commissioner of Internal Revenue that the plaintiff owed the taxes in question under the provisions of Sections 1700 and 1718 of the Internal Revenue Code is presumptively correct and the plaintiff has failed to rebut that resumption.
5. The taxes in question were legally assessed and lawfully collected.
6. The plaintiff has failed to prove a cause of action
52 against the defendant.
7. The record does not contain any substantial evidence to support findings of fact and conclusions of law and judgment in favor of the plaintiff and against the defendant.
8. The defendant is entitled to judgment dismissing plaintiff's complaint.

J. Albert Woll
J. Albert Woll,
United States Attorney,
Attorney for Defendant.

53 And on the same day, to-wit, the 4th day of December, 1946 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation Of Facts Exhibits 1 & 2 attached, in words and figures following, to-wit:

54 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the undersigned that for the purpose of any hearing on the above-entitled action the statements contained in this stipulation are true. Each party reserves the right to object to any part or all of this stipulation on the grounds of immateriality or irrelevancy, and to offer further evidence not inconsistent with the statements contained herein:

1. The plaintiff is a body politic and corporate, organized in 1908 under the provisions of a statute of the State of Illinois, approved June 24, 1895, entitled "An Act to provide for the Organization of Park Districts and the transfer of submerged lands to those bordering on navigable bodies of water," which act and the amendments thereto found in Illinois Revised Statutes, 1945, c. 105, pars. 256 through 295, are made a part hereof by reference. The plaintiff is administered by a Board of Commissioners under the provisions of the aforesaid Illinois statutes, elected by the people residing in the District. The first Board of Com-
55 missioners was elected at a general election held, in pursuance of the statute, on January 14, 1908, and the declaration of the result of such public election was made by order of the County Court of Cook County, entered January 17, 1908.

2. Carter H. Harrison was Collector of Internal Revenue for the First District of Illinois from August 21, 1933, through December 31, 1944. Nigel D. Campbell was and is Collector of Internal Revenue for the First District of Illinois since January 1, 1945.

3. The Wilmette Park District consists of an area of

approximately 2.8 square miles, located within the incorporated area of the Village of Wilmette in Cook County, Illinois, a village organized and existing under and by virtue of Chapter 24 of the Statutes of the State of Illinois, An Act known as the Revised Cities and Villages Act, which village has a population of approximately 20,000. Included within the District are four park areas aggregating approximately .78 square miles. The largest park area, known as Washington Park, extends along the shore of Lake Michigan for approximately three-fourths of a mile. The land area of Washington Park was acquired partly by a grant from the State of Illinois, partly by purchase and partly by the exercise of the right of eminent domain.

4. For more than twenty-five years, the riparian property of the Wilmette Park District at the north end of Washington Park and in the shoal waters of Lake Michigan adjacent thereto has been used as a bathing beach during the summer months.

5. During the years 1941 through 1944, the plaintiff supplied the following services and facilities for use in
56 conjunction with the bathing beach: a bath house containing clothing lockers, toilets, and wash rooms, an automobile parking area, life saving equipment, flood lighting, drinking fountains, showers, spectator benches, bicycle racks, first aid personnel and supplies.

6. The plaintiff employs the following classes of employees for work in connection with the operation and maintenance of the bathing beach: a beach superintendent, a secretary, beach maintenance labor, life guards, check room and gate check workers, general office workers and policemen.

7. The bathing beach is controlled, maintained and operated solely by the Wilmette Park District, and not by a private individual.

8. The Wilmette Park District makes a charge to all persons for admission to the bathing beach and issues tickets to all persons desiring to use the aforesaid beach, facilities and services, except that for single daily admissions which are 50c for week days and $1.00 for Saturdays, Sundays and holidays no tickets are issued.

9. Exhibit 1 contains specimen copies of tickets issued for each type of admission.

10. The bathing beach facilities are utilized principally by residents of the Wilmette Park District, but its facilities are also utilized by non-residents.

11. Exhibit 2 hereto is a statements of the receipts and expenditures for the beach during the beach seasons 1940 through 1944 and a statement of the liabilities of the beach and the facilities connected thereto at the end of each fiscal year from 1940 through 1944.

57 12. The Wilmette Park District did not, during the year 1941, or in any prior years, collect from purchasers who paid admissions to its bathing beach facilities any amount to cover the admissions tax alleged to have been imposed by the Admissions Tax Act (53 Stat. 189, as amended, c. 10, Title 26, U.S.C.A., sec. 1700).

13. From Gary, Indiana to Lake Bluff, Illinois there are 29 municipally operated bathing beaches, some of which do and some of which do not charge admissions. From South Chicago to Highland Park, Illinois there are 15 Lake Michigan bathing beaches operated by private persons for profit, of which 9 charge admissions and 6 are operated by hotels and clubs for the use of their patrons, residents and members without any express or specific admission charge.

14. On July 24, 1941, the plaintiff received a written notice from the office of the Collector of Internal Revenue for the First District of Illinois directing it to collect an admissions tax of 10% on all bathing beach tickets sold on and after July 25, 1941.

15. In June of 1942, the United States Commissioner of Internal Revenue, hereinafter called the Commissioner, made an assessment against the plaintiff for $57.20 as the amount due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the tax due under Section 1700 of the Internal Revenue Code on the amounts paid as admissions to the bathing beach of the plaintiff from July 25, 1941, to October 1, 1941. This amount was paid on June 20, 1942. A claim for refund of this amount was filed with the Collector of Internal
58 Revenue on July 17, 1942 and was rejected by letter from the Commissioner of Internal Revenue of December 22, 1942.

16. Subsequently, the Commissioner made assessments against the plaintiff aggregating $3,979.43 as the amounts

due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the taxes due under Section 1700 of the Internal Revenue Code on the amounts paid as admissions to the bathing beach of the plaintiff during the years 1942, 1943 and 1944, plus interest on the principal amount of the tax, and the amounts due under Section 3655(b) of the Internal Revenue Code for failure to pay said tax on demand. This aggregate amount was paid on May 15, 1945. A claim for refund of this amount was filed with the defendant on June 29, 1945 and was rejected by letter dated January 11, 1946.

17. Subsequently, the Commissioner made an assessment against the plaintiff of $2,103.30 as the amount due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the taxes under Section 1700 of the Internal Revenue Code on the amount paid as admissions to the bathing beach of the plaintiff during 1945. This amount was paid on November 20, 1945. A claim for refund of this amount was filed with the defendant on December 19, 1945.

Henry J. Brandt
Attorney for Plaintiff
J. Albert Woll
Attorney for Defendant

Poppenhusen, Johnston, Thompson
& Raymond
Of Counsel.

No. B 510 $1.50

INDIVIDUAL TICKET
SEASON 1943

WILMETTE BATHING BEACH

ISSUED TO _____

NON-TRANSFERABLE

FOR BEACH AND BEACH HOUSE PRIVILEGES

TOKEN NO. _____

THE WILMETTE PARK DISTRICT
HENRY FOWLER
PRESIDENT

SEE RULES OVER

No. 2005 $4.00

FAMILY TICKET
SEASON 1943

WILMETTE BATHING BEACH

ISSUED TO _____

AND MEMBERS OF FAMILY

FOR BEACH AND BEACH HOUSE PRIVILEGES

TOKEN NO. _____

THE WILMETTE PARK DISTRICT
HENRY FOWLER
PRESIDENT

SEE RULES OVER

No. D 485 $6.00

FAMILY BATHING AND PARKING TICKET
SEASON 1943

WILMETTE BATHING BEACH

ISSUED TO _____

AND MEMBERS OF FAMILY

FOR BEACH AND BEACH HOUSE PRIVILEGES
AND AUTOMOBILE PARKING SPACE

TOKENS ISSUED
NO. _____
TO _____

THE WILMETTE PARK DISTRICT
HENRY FOWLER
PRESIDENT

SEE RULES OVER

No. B 200 $2.00

INDIVIDUAL TICKET

SEASON 1946

WILMETTE BATHING BEACH

ISSUED TO _____

NON-TRANSFERABLE

FOR BEACH AND BEACH HOUSE PRIVILEGES

TOKEN NO. _____

THE WILMETTE PARK DISTRICT

CARL H. MORGENSTERN

PRESIDENT

SEE RULES OVER

SIGNATURE

No. 2195 $5.00

FAMILY TICKET

SEASON 1946

WILMETTE BATHING BEACH

ISSUED TO _____

AND MEMBERS OF FAMILY

FOR BEACH AND BEACH HOUSE PRIVILEGES

TOKENS ISSUED

NO. _____

TO _____

THE WILMETTE PARK DISTRICT

CARL H. MORGENSTERN

PRESIDENT

SEE RULES OVER

SIGNATURE

No. D 635 $7.50

FAMILY BATHING AND PARKING TICKET

SEASON 1946

WILMETTE BATHING BEACH

ISSUED TO _____

AND MEMBERS OF FAMILY

FOR BEACH AND BEACH HOUSE PRIVILEGES

AND AUTOMOBILE PARKING SPACE

TOKENS ISSUED

NO. _____

TO _____

THE WILMETTE PARK DISTRICT

CARL H. MORGENSTERN

PRESIDENT

SEE RULES OVER

SIGNATURE

EXHIBIT 1

THE WILLAMETTE BATHING BEACH

STATEMENT OF RECEIPTS AND EXPENDITURES

FOR THE YEARS ENDED MARCH 31, 1941 TO 1945, INCLUSIVE

COVERING THE BATHING SEASONS OF 1940-1944, INCLUSIVE

	SEASONS OF					
	1940	1941	1942	1943	1944	Total for Five-Year Period
GROSS RECEIPTS:						
Beach tickets	$6,149.75	$7,080.00	$7,239.25	$ 7,870.50	$ 8,529.25	$36,868.75
Bathing and parking tickets	1,962.00	2,334.00	1,962.00	1,890.00	2,280.00	10,428.00
Incidental beach receipts	140.96	203.63	196.25	242.25	345.53	1,128.62
Total	$8,252.71	$9,617.63	$9,397.50	$10,002.75	$11,154.78	$48,425.37
EXPENDITURES:						
Wages and salaries for life guards, checkers, office, police, maintenance and supervision	$4,980.00	$5,629.95	$6,459.04	$6,515.10	$ 6,962.77	$30,546.86
Miscellaneous out-of-pocket expenses such as postage, materials, tokens, etc.	1,106.02	1,833.28	1,737.80	1,858.13	1,420.05	7,955.28
Sub-total	6,086.02	7,463.23	8,196.84	8,373.23	8,382.82	38,502.14
Special expenditures for construction of additional parking areas, toilets and washrooms	-	5,934.33	261.54	-	3,685.25	9,881.12
Total expenditures	$6,086.02	$13,397.56	$8,458.38	$8,373.23	$12,068.07	$48,383.26
Difference between receipts and expenditures	$2,166.69	$ 3,779.93	$ 939.12	$1,629.52	$ 913.29	$ 42.11

NOTE:
(a) The accounts of the Beach are maintained on a cash receipts and disbursements basis.

STATEMENT OF LIABILITIES AS OF MARCH 31, 1940 TO 1945, INCLUSIVE

LIABILITIES:	1940	1941	1942	1943	1944	1945
Due to Willamette Park District General Fund	$1,160.36	$1,006.33 (a)	$2,773.60	$1,834.48	$ 204.96	$1,118.25

NOTE:
(a) Receivable as of March 31, 1941

EXHIBIT F

61 And afterwards on, to-wit, the 5th day of December, 1946 there was filed in the Clerk's office of said Court a certain Transcript Of Proceedings Had On December 4, 1946, Before Hon. William J. Campbell, District Judge, in words and figures following, to-wit:

62 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

Transcript of proceedings had and evidence taken at the hearing of the above entitled case before the Honorable Wliliam J. Campbell, one of the judges of said court, in his court room, 757 U. S. Court House, Chicago, Illinois, on Wednesday, December 4th, 1946, at 3:00 o'clock P. M.

Present:

Messrs. Poppenhusen, Johnston, Thompson & Raymond, by
Mr. Henry J. Brandt,
Appeared on behalf of the plaintiff;

Mr. J. Albert Woll,
United States District Attorney, by
Mr. John M. Kiely, and
Mr. Arthur L. Jacobs,
Special Assistant to the Attorney General,
Appeared on behalf of the defendant.

63 The Clerk: Number 43 C 318, Wilmette Park District *vs.* Nigel D. Campbell, on trial.

Mr. Kiely: If the Court please, we are waiting for the plaintiff's attorney. He is not here yet.

Mr. Jacobs: He said he would be here at three.

The Court: All right. I can be reviewing the case and making some notes. You have a stipulation, you say?

Mr. Jacobs: We have, sir. Mr. Brandt is not present. It is the final draft submitted.

The Court: All right. You can hand that up. I can be reviewing it while we are waiting for him. He has gone over this, has he?

Mr. Jacobs: Yes, sir. The final draft is submitted to his office.

The Court: Who represents the plaintiff?

Mr. Kiely: Henry J. Brandt of Poppenhusen, Johnston, Thompson & Raymond.

The Court: Poppenhusen, Johnston, Thompson & Raymond?

Mr. Kiely: Yes.

The Court: He will be here, will he?

Mr. Kiely: He will be here.

The Court: B-r-a-n-d-t.

Mr. Kiely: Yes, sir.

The Court: For the defendant will be—

64 Mr. Jacobs: Mr. Kiely and myself.

The Court: Your name?

Mr. Jacobs: Jacobs.

The Court: Assistant Attorney General?

Mr. Jacobs: Yes, sir, Special Assistant.

The Court: While we are waiting for plaintiff's counsel I will be reading the stipulation and the pleadings. Is this suit for a refund?

Mr. Jacobs: Yes, sir.

The Court: Admissions or income tax?

Mr. Jacobs: Admissions tax.

Mr. Brandt: The witness is here, your Honor. We can proceed.

The Court: Do you want to sign this stipulation?

Mr. Brandt: Yes.

The Court: They say it is all ready for your signature.

Mr. Brandt: Yes, sir.

The Court: There is further evidence on behalf of the plaintiff, is there?

Mr. Brandt: Just a little evidence, if the Court please.

The Court: The plaintiff may proceed.

Mr. Brandt: Mr. Spacek, will you please take the stand?

65 LEONARD P. SPACEK, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brandt.

Q. What is your name, please?

A. Leonard P. Spacek.

Q. What is your business or profession, Mr. Spacek?

A. I am a public accountant with the firm of Arthur Anderson & Company.

Q. Their Chicago office?

A. Their Chicago office. They have a Chicago office, which is the home office, and also in twenty other cities in the United States and in Europe and in Mexico.

Q. Where do you reside, Mr. Spacek?

A. 1221 Chestnut Avenue, Wilmette, Illinois.

Q. In what way, if any, are you connected with the plaintiff in this suit, with Wilmette Park District?

A. I am one of the Commissioners of the Park District.

Q. One of the five Commissioners elected by the people?

A. Yes, sir.

Q. What other function do you perform on that Commission?

66 A. I am also the Chairman of the Finance Committee.

Q. Are you familiar with the books of account and financial records of the Park District?

A. Yes, sir.

Q. What if anything did you have to do with the preparation of Exhibit 2 attached to the stipulation in this case?

A. It was prepared at my direction and under my supervision.

Q. Now, does this Exhibit 2, Mr. Spacek, show all the charges to the bathing beach that are carried on the books of account of the Park District?

A. Under the caption of that sub-title "Expenditures" in the extreme left hand side, all the expenses of the beach are included as shown on the books, except the amount of taxes, federal taxes, which have been paid under protest and are held in suspense.

Q. Those are the payments of taxes that are involved in this litigation?

A. Yes, sir, approximating $6,000.

Q. They don't show on Exhibit 2?

A. No.

Q. They are carried, you say, in a suspense account?

A. They are carried as an expense under protest,
67 and are not included in this exhibit.

Q. Yes.

A. There are also certain other expenses which are not included herein, and that is that the beach was acquired by the Park District many years ago through funds raised by debt. The interest of that debt and the payments for the beach itself have been charged to the general fund and are not allocated to the beach in any way.

The Court: Q. It is the general fund of the Park District?

A. That is right. In other words, the beach is part of the Park District property.

Mr. Brandt: I understand.

The Witness: There has never been any need to account for the beach as a separate entity standing on its own feet.

Mr. Brandt: Q. As I understand you, then, this exhibit, if it did show such charges which show an additional sum both under the heading of Expenditures and also under the heading of Liabilities at the bottom of that exhibit?

A. That is right. The amount under liabilities would be increased by the amount it would be necessary to borrow from the general fund to pay this tax of $6,000. Therefore,
it would increase the liability shown to approximately
68 $7,000 it would increase the net difference, the difference between receipts and expenditures, the last line of the first table, so that the $42.11 would become a loss of approximately $6,000.

The Court: Q. You don't mean for taxes; you mean for the acquisition of the beach?

A. It would be, if those taxes are charged against these expenditures it would result in a loss.

Q. I see.

A. To the beach.

Mr. Brandt: Q. It would be a further loss?

A. Then, of course, you are entirely right. If the expenses, the interest cost on paying the debt on the beach, that would also, aside from the taxes, increase the loss.

Q. Yes.

A. Of course, if it was operated as a separate entity completely there would be a charge against the beach for the use of that land which under the present circumstances there is no need to make an accounting of that sort.

Q. Now, I direct your attention to the last line on that exhibit under the heading of "Liabilities" due Wilmette Park District general fund.

69 What do you mean by the words "General Fund"?

A. General Fund, I mean the tax funds of the Wilmette Park District.

Q. You mean the funds that are raised by general taxation or imposed upon the assessed valuation of the property in the district?

A. Yes.

Q. And owned by the residents of the district?

A. Yes, sir.

Q. These liabilities on that last line show an invasion of these tax funds of the Park District, is that so?

A. Yes, sir. It shows the amount of the Park District funds that were necessary to make up the deficit in the beach operations as shown on this exhibit. That is the deficit exclusive of the interest charges involved.

Mr. Brandt: You may cross examine, Mr. Jacobs.

The Witness: I would like to make one further statement in respect to these taxes, Mr. Brandt. That is, if the amount is paid the Park District must secure these funds through taxation by levying taxes on the Park District in the Park District levy against the general real estate owners belonging in the Park District.

Mr. Brandt: I see.

The Court: You may cross examine.

70 *Cross-Examination by Mr. Jacobs.*

Q. Mr. Spacek, will you clarify for me, please, what the reference is to note a receivable as of March 31, 1941, Exhibit 2, referring to, I presume, to the liability for 1941?

A. In that, as of March 31, '41, of one year in the history of the beach the accumulated operations of the beach resulted in a surplus of $1,006.33. So that in that one year the beach had paid off all of its liability and had an excess of $1,006.33 in funds, which were as usual given to the general fund and shown as a receivable from the general fund.

That same year, of course, in '41, the beach had a deficit from operations, that is, a loss from operations of $3,779.93, which require a reversal of that position and the general fund had to advance a fund so that the balance of which necessarily was $2,773.60. In other words, that beach had borrowed from the general fund in all years from 1930 to date, except for the year 1941, there was a small balance in the other direction.

Q. Mr. Spacek, several times on direct and cross examination you referred to the term of surplus, deficit
71 that would change all of the accounting.

Q. Let me understand, not based upon municipal accounting practices.

A. Commercial accounting practices, if we followed the commercial accounting practice, we would assume that we would take the last items of special expenditures and capitalize them, write them off during a period of—if we had them over this period, we would also go back to 1930 and take similar items that have been charged to expenses and set them up in the accounts and amortize them so that the charges for the period from 1940 to '44 for all of the expenditures that have been made, that have continuous use or use value over one year, were charged to these years the charge to expense in place of special expenditures might even be greater than the amount of special expenditures.

Q. You don't know how much they would be?

A. It would be very substantial. I don't know how much it would be, no. It would be in thousands of dollars. How much it would be I have not attempted to determine.

I can't give this, because this is a municipal accounting. You are asking that the whole thing be reset on a different basis.

Q. I am not asking that it be re-set on a different basis.

72 A. To determine the profit and loss on a commercial basis you would have to re-set it. You would have to

re-set not only these years, but all the years that have gone by.

Q. For any one year you do not know what had been carried forward from those years?

A. I couldn't say. I have not made that determination.

The Court: Q. It could be made from the books of the plaintiff?

A. It could be made. That is, I mean, it couldn't be made from the books. It would require an exercise of judgment.

Q. The value at the time of the construction and present value?

A. We would have also to go back into the books to determine how much. For instance, we have a beach house there. We wrote that off in the first ten years. We are also still using it.

Q. You always kept your books on this basis?

A. We always kept our books on this basis since 1930, with the one exception of the beach house, which was the initial building of the beach house. That was amortized, I believe, over a ten-year period.

Q. That was built then, in 1930?

73 A. I believe it was 1930.

The Court: Pardon my interruption.

Mr. Jacobs: No. If your Honor has any further questions?

The Court: The only thing I was concerned with the method, whether or not this was a uniform procedure.

Q. When was the Park District started? When was it chartered by the Legislature?

A. That is before my time.

Mr. Brandt: 1907.

The Court: Before your time.

Mr. Brandt: I was in high school.

The Court: Q. 1930, as far as you know, is the only time they ever made a substantial expenditure and charged it to capital expenditure and amortized it over a period of years, that was for a beach house?

A. Actually they did not charge it. As far as accounting, the general fund had raised the money. They loaned it to them. They paid it back to us when they could do so. They

amortized it. In other words, the loan, they just paid off the loan that the general fund made to them to build the beach house.

In effect it was amortized through profits, that is, excess of the collections we had out of ticket increase.

74 Q. You say we loaned it to them. The Park District loaned it to one of their departments?

A. Yes.

Q. It is all one entity?

A. It is all one entity. We only account for it for the purpose of controlling expenses, showing how the billing for the tickets to the beach was just sufficient to cover our expenses. It is just a method of allocating expenses to the users of that beach.

The Court: Q. That is your purpose?

A. That is my purpose.

Mr. Jacobs: I move to strike that.

The Court: We do not have a jury here. I will not be persuaded. I won't guarantee that by the argument of counsel. The argument will be stricken. I am sorry to have interrupted the cross examination.

Mr. Jacobs: No. My cross examination is complete.

The Court: You have no further examination?

Mr. Jacobs: I have no further examination.

The Court: Do you have any redirect, Mr. Brandt?

Mr. Brandt: No redirect. That is all, your Honor.

The Court: Very well. You may step down.

(Witness excused)

75 The Court: Any further evidence on behalf of the plaintiff?

Mr. Brandt: No further evidence.

The Court: Let the record show that the stipulation entered into by counsel this day is filed and received in evidence herein on behalf of both plaintiff and defendant. The plaintiff rests.

Any further evidence on behalf of the defendant?

Mr. Jacobs: There will be no evidence on behalf of the defendant.

The Court: Other than the stipulation.

Mr. Jacobs: Yes; but then at the close of plaintiff's case we would like to file a written motion for a judgment.

The Court: I will take in under advisement.

Mr. Jacobs: Of course.

The Court: Give it to the clerk.

Mr. Jacobs: At this time the government will rest also.

The Court: The defendant rests.

(And thereupon both plaintiff and defendant rested their case.)

The Court: If it is agreeable to counsel, the motion for a directed verdict at the end of the plaintiff's case will
76 be joined and argued by the defendant as one matter, if you are arguing for a finding at the end of all the evidence. I think we have that for preserving the record. I think we will decide the case on the merits based on all of the evidence that is in.

What time do you want for your briefs?

Mr. Brandt: Your Honor, I am working on two briefs now. I am going to have to ask for twenty days.

The Court: That is not unreasonable.

Mr. Brandt: I think I will have it ready by that time.

Mr. Jacobs: I would be more than glad to give counsel thirty days.

Mr. Brandt: Make it thirty days. I will be glad to have it.

The Court: Why don't we make it thirty, thirty and ten for your replication?

Mr. Brandt: That is all right.

The Court: Do you want twenty?

Mr. Brandt: That is all right. I think ten is plenty.

The Court: Thirty, thirty and ten days on the briefs, whereupon all issues presented in this cause will be taken by the Court without further argument.

Mr. Brandt: Yes.

The Court: It is so ordered.

Mr. Jacobs: Could I point out one thing? As I have
77 advised Mr. Brandt, $57.00 of this amount was paid to the preceding collector. There is nothing that can be done about it. As to that amount there is no other defense at all. It is a very small amount, negligible.

The Court: It was paid to the previous collector?

Mr. Jacobs: Yes.

The Court: Mention that in your briefs, will you?

Mr. Jacobs: Yes.

The Court: That will be all.

(Which was all of the proceedings had or evidence presented at the hearing of the above entitled case.)

78 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—43 C 318) * *

CERTIFICATE.

I hereby certify that the above and foregoing is a full, true and accurate transcript of original shorthand notes taken upon the hearing of the above entitled case.

Paul A. Ruhe
Official Court Reporter,
U. S. District Court,
Northern District of Illinois.

December 4, 1946.

80 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—43 C 318) * *

This cause this day being called for trial come the parties by their attorneys, respectively, and the issues being joined the trial of this cause proceeds and at the conclusion of the evidence adduced for the plaintiff the defendant by counsel enters his motion for judgment in his favor and against the plaintiff, ruling thereon being reserved by the Court; the defendant rests upon the stipulation of facts herein and

It Is Ordered that brief and argument of the plaintiff be filed within thirty (30) days from this date, that defendant's brief and argument be filed within thirty (30) days thereafter and that the plaintiff have ten (10) days thereafter within which to file reply brief, whereupon disposition herein will be taken under advisement by the Court without further argument.

96 And afterwards on, to-wit, the 25th day of July, 1947 there was filed in the Clerk's office of said Court a certain Memorandum of the Court in words and figures following, to-wit:

97 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—43 C 318) * *

MEMORANDUM.

Campbell, District Judge.

In this suit to recover certain sums paid under protest, the plaintiff relies on three propositions: (1) That its operation of a bathing beach on park land is a governmental, not a proprietary function, and hence that the federal admissions tax may not be levied against persons paying the charge assessed by the plaintiff for the use of the beach; (2) That the plaintiff's officials may not be required to assist in the collection of federal taxes; (3) That the charge assessed by plaintiff for the use of the beach and its facilities is not an admission charge.

The first proposition raises the constitutional question of the immunity of a state and its subdivisions from the federal taxing power. Constitutional questions, of course, should not be determined by a court unless they are necessarily raised by the case before it. I think that this constitutional question is not necessarily presented by this case, and that it is therefore unnecessary to consider whether the operation of a public bathing beach is a governmental or proprietary function within the sharply limited meaning of "governmental" given in *New York* v. *United States*, 326 U. S. 572. The tax here was levied not upon the plaintiff's operation of the beach, or upon the plaintiff's property, but upon those members of the public who paid the charge levied by the plaintiff as a prerequisite to the use of the beach. The situation here presented is thus different from the one in *New York* v. *United States*, *supra*, in which the federal tax was laid upon the sale by the state of mineral water from state-owned springs, although of course the incidence of the tax may have been on the ulti-

mate consumer, as in the case of the usual sales or excise tax.

The second proposition is refuted by the decision in *Allen* v. *Regents*, 304 U. S. 439, in which the federal admissions tax on admissions to Georgia college football games was upheld. Thus if a federal tax may constitutionally be levied upon a certain type of state activity as it is levied upon corresponding types of activities conducted by private persons, the administrative burden which may be laid upon private persons in the collection of the tax may likewise be laid upon state and local officials.

However, I think the third proposition is valid, and disagree with the defendant's argument that it is immaterial whether or not the plaintiff seeks to operate a public
98 beach at cost or at a profit. In levying a charge which brings in approximately enough revenue to cover the cost of operation, the plaintiff is in fact levying a use tax on those who use its beach facilities, although it is called an admission charge. This ruling is not in conflict with *Allen* v. *Regents*, *supra*, in which the federal admissions tax was upheld as applied to purchasers of tickets to state university football games. The revenue from collegiate football games is obviously not intended merely to equal the cost of maintaining the football stadium. If a public beach is operated for profit, the charge for tickets would not be a use tax but an admission within the meaning of section 1700 of the Internal Revenue Code.

The defendant makes the point that the third proposition argued by the plaintiff in its brief was not raised in the complaint and therefore is not before the court. In view of the policy behind the rule allowing amendment of pleadings to conform to proof, and of the fact that the defendant does not plead surprise, I think that the third proposition should not be stricken.

The defendant's motion for judgment is therefore denied. The plaintiff is entitled to judgment for the sum paid under protest, and interest, except for the sum of $57.20 paid to the defendant's predecessor in 1942.

Counsel for the plaintiff may prepare and file with the Court, in writing, within twenty days from the date hereof, proposed findings of fact, conclusions of law and a draft

of a proposed decree, consistent with the views herein expressed, delivering copies thereof to counsel for the defendant. Within twenty days of the receipt of such copies, counsel for the defendant may prepare and file with the Court, in writing, his observations with reference thereto and suggestions for the modification thereof, delivering a copy of such observations and suggestions to counsel for the plaintiff. Within ten days thereafter counsel for the plaintiff may present to the Court, in writing, his reply to such observations and suggestions. Whereupon, the matter of making findings of fact, conclusions of law and a decree herein will be taken by the Court without further argument.

Campbell

Judge.

July 25, 1947.

101 And afterwards on, to-wit, the 14th day of August, 1947 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice And Motion For New Trial in words and figures following, to-wit:

102 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

NOTICE.

To: Mr. Henry J. Brandt,
c/o Poppenhusen, Johnston, Thompson & Raymond,
11 South La Salle Street,
Chicago, Illinois.

Please take notice that on Thursday, August 14, 1947, at the opening of court in the forenoon, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Philip L. Sullivan, in the room usually occupied by him as a court room, United States Courthouse, Chicago, Illinois, or before whoever may be presiding in his place and stead, and shall then and there ask leave of court to file a motion for a new trial in the above case, a copy of

said motion being herewith served upon you, and to have said motion set down for hearing on a day certain; at which time and place you may appear if you so desire.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney.
Attorney for Defendant.

Received copy of the above Notice,
together with copy of the Notion
referred to therein, this.....day
of August, A. D. 1947.
Henry J. Brandt
Attorney for Plaintiff.

103 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

MOTION FOR NEW TRIAL.

The defendant respectfully moves the court for a new trial, for a rehearing upon the ruling of the court in the memorandum dated July 25, 1947, that the charge assessed by the plaintiff for the use of the beach and facilities is not an admission charge, and that judgment be entered for the defendant dismissing the complaint for the following reasons:

1. The aforesaid ruling of the court is in conflict with the ruling laid down in the controlling decision of the United States Circuit Court of Appeals for the Seventh Circuit in *Exmoor Country Club* v. *United States*, 119 F. 2d 961, in which the taxpayer contended, first, that the charges paid for the use of its swimming pool and skating rinks was not for "admission" and, secondly, that the admissions tax was inapplicable because the premises and activities were not open to the public and had not been carried on nor its facilities operated for profit. The Circuit Court rejected this contention reversing the decision of the court below and specifically ruling to the contrary as follows (p. 963):

In our case neither guest nor member would have been

admitted to the pool or rink without the payment of an admission charge, consequently, the payment of the charge for the guest was for his admission to and use of the pool and rink.

104 Second, Appellee contends that the statute is inapplicable because its premises and activities are not open to the public nor operated for profit and counsel argues that the intent of the statute was to reach admissions to public activities carried on for profit. To be sure, if doubt exists as to the construction of a taxing statute, that doubt should be resolved in favor of the taxpayer, but that is no reason for creating a doubt where none exists. The language of the statute now considered is plain and unambiguous. There is nothing in the language of the statute from which it can be inferred that Congress intended that the statute shall apply only to activities open to the public or to those conducted for profit. It clearly imposes the tax on amounts paid for admission to any place. Had Congress intended restricting taxable admissions solely to those charged as public places operated for profit, it would have specifically exempted such admission, as it has exempted the proceeds inuring exclusively to the benefit of religious, educational and charitable organizations and others mentioned in the statute.

2. The aforesaid ruling of this Court in the case at bar is in conflict with the decision of this Court in *Dashow* v. *Harrison*, No. 44-C-876, decided February 8, 1946, and unofficially reported in 1946 P-H, par. 72, 405. The question involved in that case was the same question presented in the aforesaid ruling of this Court under virtually identical facts: Whether the charges paid by the taxpayer for the use of the bathing beach of the Glencoe Park District was paid for "admission" within the meaning of this statute. The court found as a fact:

> The revenues derived by the District from general property taxes for the year 1943 and for a number of years both prior and subsequent thereto have not been sufficient to enable the District to maintain and operate all of its facilities and parks and also at the same time to pay all the costs and expenses of operating, maintaining and regulating Glencoe Beach. The charge for

beach tickets was fixed to approximate the cost of the beach. The receipts, however, did not during the taxable year equal the cost of maintaining the beach and such deficits as existed were paid out of funds raised by federal taxes.

The court specifically ruled in its conclusions of law that:

1. The charge of $3.00 which the plaintiff paid in 1943 for the season ticket to enter and use Glencoe Beach was paid for admission to a place within the meaning of Internal Revenue Code, Section 1700(a).

105 2. The tax of thirty cents which was collected by the Park District from the plaintiff in connection with the issuance of the season ticket of admission was properly imposed under the federal statute.

3. The ruling of the court is inconsistent with and contradicted by the stipulated facts, that plaintiff "makes a charge to all persons for admission to the bathing beach and issues tickets to all persons desiring to use the aforesaid beach" and that the taxes in question were assessed and collected "on the amount paid as admission to the bathing beach." (Stip. par. 8, 15, 16, 17.)

Otto Kerner, Jr.
United States Attorney
Attorney for Defendant.

106 And on the same day, to-wit, on the 14th day of August, 1947 being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to-wit:

107 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

Comes now the defendant by the United States Attorney and presents his motion for a new trial and it is

Ordered that said motion be entered and that it be and is hereby set for hearing on September 12, 1947, before the Honorable William J. Campbell, one of the Judges of this Court.

108 And afterwards on, to-wit, the 8th day of September, 1947 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Proposed Findings Of Fact And Conclusions Of Law in words and figures following, to-wit:

109 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on for trial and the court having heard the evidence and considered the stipulations of the parties, finds the facts and states the conclusions of law as follows:

Findings of Fact.

1. Plaintiff is a body politic and corporate, organized in 1908 under the provisions of a statute of the State of Illinois, approved June 24, 1895, entitled "An Act to provide for the Organization of Park Districts and the transfer of submerged lands to those bordering on navigable bodies of water," (Illinois Revised Statutes, 1945, c.105, pars. 256 through 295).

2. Plaintiff is administered by a Board of Commissioners under the provisions of the aforesaid Illinois statutes, elected by the people residing in the District. The first Board of Commissioners was elected at a general election held in pursuance of the statute on January 14, 1908, and the declaration of the result of such public election was made by an order of the County Court of Cook County entered January 17, 908.

3. Nigel D. Campbell was and is Collector of Internal Revenue for the First District of Illinois since January, 1 1945.

4. The Wilmette Park District consists of an area of approximately 2.8 square miles, located within the incorporated area of the Village of Wilmette in Cook County, Illinois, a village organized and existi -der and by virtue

of Chapter 24 of the Statutes of the State of Illinois, An Act known as the Revised Cities and Villages Act, which village has a population of approximately 20,000. Included within the District are four park areas aggregating approximately .78 square miles. The largest park area, known as Washintgon Park, extends along the shore of Lake Michigan for approximately three-fourths of a mile. The land area of Washington Park was acquired partly by a grant from the State of Illinois, partly by purchase and partly by the exercise of the right of eminent domain.

5. For more than twenty-five years, the riparian property of the Wilmette Park District at the north end of Washingeon Park and in the shoal waters of Lake Michigan adjacent thereto has been used as a bathing beach during the summer months.

6. During the years 1941 through 1944, the plaintiff supplied the following services and facilities for use in conjunction with the bathing beach: a bath house containing clothing lockers, toilets and wash rooms, an automobile parking area, life saving equipment, flood lighting, drinking fountains, showers, spectator benches, bicycle racks, first aid personnel and supplies.

7. The plaintiff employes the following classes of employees for work in connection with the operation and
111 maintenance of the bathing beach; a beach superintendent, a secretary, beach maintenance labor, life guards, check room and gate check workers, general office workers and policemen.

8. The bathing beach is controlled, maintained and operated solely by the Wilmette Park District and not by a private individual.

9. The Park District issues two types of tickets to users of the beach and beach facilities: (1) a family ticket for use of a citizen and members of his family and guests for the entire season and (2) a single daily admission which is 50c for week days and $1.00 for Saturdays.

10. The charge made by the Park District for use of the beach and beach facilities is made to cover maintenance and operation but the charges thus made have never fully supported the operation of the beach facilities. A substantial portion of the costs of operation and maintenance

in every year have been paid out of tax revenues collected by the Park District from general taxation. The charge for the use of the beach and beach facilities has never produced income and was not intended to produce net income or profit to the Park District.

11. From Gary, Indiana to Lake Bluff, Illinois there are 29 municipally operated bathing beaches, some of which do and some of which do not charge admissions. From South Chicago to Highland Park, Illinois there are 15 Lake Michigan bathing beaches operated by private persons for profit, of which 9 charge admissions and 6 are operated by hotels and clubs for the use of their patrons, residents and members without any express or specific admission charge.

12. On July 24, 1941 the plaintiff received a written notice from the Office of the Collector of Internal Revenue for the First District of Illinois directing it to collect
112 an admissions tax of 10% on all bathing beach tickets sold on and after July 25, 1941.

13. The Wilmette Park District did not, during the year 1941, or in any prior years, collect from purchasers who paid admissions to its bathing beach facilities any amount to cover the admissions tax alleged to have been imposed by the Admissions Tax Act, (53 Stat. 189, as amended c. 10, Title 26, U.S.C.A., sec. 1700).

14. In June of 1942 the United States Commissioner of Internal Revenue, hereinafter called the Commissioner, made an assessment against the plaintiff of $57.20 as the amount due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the tax due under Section 1700 of the Internal Revenue Code on the amounts paid as admissions to the bathing beach of the plaintiff from July 25, 1941 to October 1, 1941. This amount was paid on June 20, 1942. A claim for refund of this amount was filed with the Collector of Internal Revenue on July 17, 1942 and was rejected by letter from the Commissioner of Internal Revenue of December 22, 1942.

15. Subsequently the Commissioner made assessments against the plaintiff aggregating $3,979.43 as the amounts due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the taxes due under Section 1700 of the Internal Revenue Code on the

amounts paid as admissions to the bathing beach of the plaintiff during the years 1942, 1943 and 1944, plus interest on the principal amount of the tax and the amounts due under Section 3655 (b) of the Internal Revenue Code for failure to pay said tax on demand. This aggregate
113 amount was paid on May 15, 1945. A claim for refund of this amount was filed with the defendant on June 29, 1945 and was rejected by letter dated January 11, 1946.

16. Subsequently the Commissioner made an assessment against the plaintiff of $2,103.30 as the amount due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the taxes under Section 1700 of the Internal Revenue Code on the amount paid as admissions to the bathing beach of the plaintiff during 1945. This amount was paid on November 20, 1945. A claim for refund of this amount was filed with the defendant on December 19, 1945 and was subsequently rejected.

Conclusions of Law.

1. It is unnecessary to consider whether the operation of a public bathing beach is a governmental or proprietary function since the tax was levied not upon plaintiff's operation of the beach or upon its property but upon the members of the public who paid the charge levied by the plaintiff as a prerequisite to the use of the beach. The constitutional question of the immunity of a state and its subdivisions from said taxing power need not, therefore, be determined.

2. That plaintiff's commissioners may not be required to assist in the collection of federal taxes is part and parcel of the question of the constitutionality of a tax levied against persons paying the charge assessed by the plaintiff for the use of the beach. A federal tax may constitutionally be levied upon a state activity, as it is levied upon corresponding types of activities conducted by private persons and the admiinstrative burden may be laid upon state and local officials.

114 3. The charge assessed by plaintiff for the use of the beach and its facilities is not an admission charge but a use tax imposed upon those who use its facilities. It is a single license fee paid by the head of a family for multiple

use of all members of the family during the year or by an individual for the privilege of using beach facilities, to defray part of plaintiff's cost of maintaining, operating and regulating the beach and its facilities. No profit results from pliantiff's operation and part of the cost of maintaining, operating and regulating the beach facilities are paid out of general funds by taxation. The charge is, therefore, not an admission within the meaning of the act in question.

It Is Therefore Ordered And Adjudged that judgment be entered for the plaintiff for the sum of $6082.73 with interest on $3979.43 thereof from May 15, 1945 and upon $2103.30 thereof from November 20, 1945 at the rate of six percent per annum.

Enter.....

Judge.

115 And on the same day, to-wit, the 8th day of September, 1947 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Proposed Findings Of Fact And Conclusions Of Law in words and figures following, to-wit:

116 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The defendant respectfully requests the court to make and enter the Findings of Fact and Conclusions of Law attached hereto.

Otto Kerner, Jr.
United States Attorney
Attorney for Defendant.

117 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Findings of Fact.

1. The court finds as facts all of the facts included in the stipulation of facts entered into between counsel for the plaintiff and counsel for the defendant filed with the court and received in evidence.

Conclusions of Law.

1. The admissions tax imposed by Section 1700, et seq, of the Internal Revenue Code, as applied to the amounts paid as admission to the bathing beach operated by the plaintiff does not violate the Constitution of the United States.

2. The provisions of Sections 1715 and 1716 of the Internal Revenue Code imposing upon the plaintiff's officials and employees the duty of assisting in the collection of such admissions tax do not violate the Constitution of the United States.

3. The charge made by the plaintiff to all persons for admission to the bathing beach is the amount "paid for admission to any place" within Section 1700 of the Internal Revenue Code.

118 4. The amount paid to the plaintiff as admission to the plaintiff's beach is subject to the tax imposed by Section 1700 of the Internal Revenue Code.

5. The plaintiff owes the amount of said taxes under the provisions of Section 1718 of the Internal Revenue Code assessed and collected from the plaintiff.

6. This suit may not be maintained against the defendant for the recovery of amounts paid to the defendant's predecessor in office.

7. The defendant is entitled to judgment dismissing the complaint.

.....

District Judge.

Received copy of the foregoing Findings of Fact and Conclusions of Law.

Poppenhusen, Johnston,
Thompson & Raymond,
Attorneys for Plaintiff.

119 And on the same day, to-wit, the 8th day of September, 1947 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Objections To Plaintiff's Proposed Findings Of Fact And Conclusions Of Law in words and figures following, to-wit:

120 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

OBJECTIONS TO PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The defendant objects to the plaintiff's proposed findings of fact because it omits paragraphs 8, 9, 10 and 11 of the stipulation of facts filed with the court and received in evidence.

2. The defendant objects to plaintiff's proposed finding of fact No. 9 and particularly, the word "users" therein, because there is no evidence to support such a finding, for the reasons stated in the defendant's motion for new trial and for the further reason that it is contrary to the stipulated facts and particularly (Stipulation, par. 8)—

> The Wilmette Park District makes a charge to all persons for admission to the bathing beach and issues tickets to all persons desiring to use the afresaid beach, facilities and services,
>
> * * *

3. The defendant objects to proposed finding of fact No. 10 for the reason that the facts stated herein are contrary to the evidence, are clearly erroneous and are unsupported by any substantial evidence.

4. The defendant objects to conclusion of law No. 2 for the reasons that:

121 (a) The first sentence of said conclusions has no support in the ruling of the court in the court's memorandum dated July 25, 1947.

(b) The second sentence of said conclusion fails to state the complete general ruling upon which the court specifically ruled against the plaintiff upon the plaintiff's second contention, as stated in the court's memorandum dated July 25, 1947.

(c) The second sentence of said conclusion fails to state the specific ruling of the court in the court's memorandum dated July 25, 1947, that the plaintiff's officials may constitutionally be required to assist in the collection of the federal admissions tax imposed under Section 1700 of the Internal Revenue Code to any amount which may have been paid for admission to the bathing beach operated by the plaintiff.

5. The defendant objects to conclusion of law No. 3 because the facts stated therein are contrary to the evidence, are unsupported by any substantial evidence, are clearly erroneous, and for the further reason that the conclusions of law stated therein, based on such facts, are erroneous for the reasons stated in the defendant's motion for new trial.

Otto Kerner, Jr.
United States Attorney
Attorney for Defendant.

Received copy of the above and foregoing Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law this 8 day of September, 1947.

Poppenhusen, Johnston,
Thompson & Raymond,
Attorneys for Plaintiff.

126 And afterwards, to-wit, on the 12th day of September, 1947 being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to-wit:

127 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

The motion of the Defendant for a new trial is hereby taken under advisement by the Court to be ruled upon, at the suggestion of the parties by counsel, at the same time the Court rules on the findings of fact, conclusions of law and judgment order.

128 And afterwards on, to-wit, the 15th day of September, 1947 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Answer To Objections To Plaintiff's Proposed Findings Of Fact And Conclusions Of Law in words and figures following, to-wit:

129 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

ANSWERS TO OBJECTIONS TO PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The first objection that the Findings of Fact of Plaintiff leave out Paragraphs 8, 9, 10 and 11 of the Stipulation is in error. Paragraph 8 of the Stipulation was rewritten as Paragraph 9 in our suggested Findings of Fact to take account of the exhibits, namely specimens of the two types of tickets used at the bathing beach. The tickets on their face show what we say of them in the ninth Finding of Fact. We believe the Court's findings should not merely reiterate the Stipulation but should state the ultimate facts.

Paragraph 9 of the Stipulation is merely a statement that Exhibit 1 contains specimen copies of tickets issued for each type of admission. Our finding number 9 clearly describes those exhibits.

Paragraph 10 of the Stipulation we regarded as immaterial but we have no objection to its being included in the findings.

Paragraph 11 of the Stipulation is merely a statement characterizing Exhibit 2. In finding number 10 we state
130 the ultimate facts revealed by that exhibit and by the testimony with reference thereto of the sole witness in the case.

2. Objection number 2, that Finding of Fact number 9 is contrary to Paragraph 8 of the Stipulation is true, but Paragraph 9 of the Stipulation agreeing upon the terms of the tickets and attaching the tickets themselves controls Paragraph 8 because on the face of the tickets themselves they are shown to be "issued to.....and members of

family." Finding number 9 is clearly supported by Exhibit 1, excepting only that it does not support any reference to the word "guests" which word and the conjunction preceding it in line three of Finding of Fact number 9 the plaintiff is willing to have stricken.

3. Defendant's objection to finding number 10 is without merit. The accounting Exhibits number 2, stipulated to in Paragraph 11 and the testimony of the witness Spacek with reference thereto clearly supports finding number 10.

4. Objection 4a, b and c is a criticism of our interpretation of a portion of the Court's memorandum of opinion of July 24, 1947. Adversary counsel's construction appears in his Conclusion of Law number 2. We believe our Conclusion of Law number 2 more accurately states what the Court intended to say.

5. Objection number 5 is purely argumentative and we believe from what we have already said under paragraphs 2 and 3 that there can be no doubt that Conclusion of Law number 3 is supported by the record.

Henry J. Brandt,
Attorney for Plaintiff.

Poppenhusen, Johnston, Thompson
& Raymond
11 South LaSalle St.
Of Counsel.

131 And afterwards, to-wit, on the 29th day of September, 1947 being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to-wit:

132 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—43 C 318) * *

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT.

Findings of Fact.

1. Plaintiff is a body politic and corporate, organized in 1908 under the provisions of a statute of the State of Illinois, approved June 24, 1895, entitled "An Act to provide for the Organization of Park Districts and the transfer of submerged lands to those bordering on navigable bodies of water," (Illinois Revised Statutes, 1945, c. 105, pars. 256 through 295).

2. Plaintiff is administered by a Board of Commissioners under the provisions of the aforesaid Illinois statutes, elected by the people residing in the District. The first Board of Commissioners was elected at a general election held in pursuance of the statute on January 14, 1908, and the declaration of the result of such public election was made by an order of the County Court of Cook County entered January 17, 1908.

3. Nigel D. Campbell was and is Collector of Internal Revenue for the First District of Illinois since January 1, 1945 for the duration of the period in suit.

4. The Wilmette Park District consists of an area of approximately 2.8 square miles, located within the incorporated area of the Village of Wilmette in Cook County, Illinois, a village organized and existing under and by virtue of Chapter 24 of the Statutes of the State of Illinois, an act known as the Revised Cities and Villages Act, which village has a population of approximately 20,000. Included

within the District are four park areas aggregating approximately .78 square miles. The largest park area, known as Washington Park, extends along the shore of Lake Michigan for approximately three-fourths of a mile. The land area of Washington Park was acquired partly by a grant from the State of Illinois, partly by purchase, and partly by the exercise of the right of eminent domain.

5. For more than twenty-five years, the rigarian property of the Wilmette Park District at the north end of Washington Park and in the shoal waters of Lake Michigan adjacent thereto has been used as a bathing beach during the summer months.

133 6. During the years 1941 through 1944, the plaintiff supplied the following services and facilities for use in conjunction with the bathing beach: a bath house containing clothing lockers, toilets and wash rooms, an automobile parking area, life saving equipment, flood lighting, drinking fountains, showers, spectator benches, bicycle racks, first aid personnel and supplies.

7. The plaintiff employs the following classes of employees for work in connection with the operation and maintenance of the bathing beach: a beach superintendent, a secretary, beach maintenance labor, life guards, check room and gate check workers, general office workers, and policemen.

8. The bathing beach is controlled, maintained, and operated solely by the Wilmette Park District and not by a private individual.

9. The bathing beach facilities are utilized principally by residents of the Wilmette Park District, but its facilities are also utilized by non-residents.

10. The Park District makes two types of charges to users of the beach and beach facilities: (1) a flat rate for a season ticket, issued on either an individual or a family basis, and (2) a single daily admission charge of 50c on week days and $1.00 on Saturdays, Sundays, and holidays, for which no tickets are issued.

11. The charge made by the Park District for use of the beach and beach facilities is made to cover maintenance, operation, and some capital improvements. Over the years

the charge for the use of the beach and beach facilities is intended merely to approximate these costs, and not to produce net income or profit to the Park District.

12. From Gary, Indiana to Lake Bluff, Illinois there are 29 municipally operated bathing beaches, some of which do and some of which do not charge admissions. From South Chicago to Highland Park, Illinois there are 15 Lake Michigan bathing beaches operated by private persons for profit, of which nine charge admissions and six are operated by hotels and clubs for the use of their patrons, residents, and members without any express or specific admission charge.

13. On July 24, 1941 the plaintiff received a written notice from the Office ofthe Collector of Internal Revenue for the First District of Illinois directing it to collect an admission tax of 10% on all bathing beach tickets sold on and after July 25, 1941.

14. The Wilmette Park District did not, during the year 1941, or in any prior years, collect from purchasers who paid admissions to its bathing beach facilities any amount to cover the admissions tax alleged to have been imposed by the Admissions Tax Act (53 Stat. 189, as amended, c. 10, Title 26, U. S. C. A., sec. 1700).

15. In June of 1942 the United States Commissioner of Internal Revenue, hereinafter called the Commissioner, made an assessment against the plaintiff of $57.20 as the amount due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the tax due under Section 1700 of the Internal Revenue Code on the amounts paid as admissions to the bathing beach of the plaintiff from July 25, 1941 to October 1, 1941. This amount was paid on June 20, 1942. A claim for refund of this amount was filed with the Collector of Internal Revenue on July 17, 1942 and was rejected by letter from the Commissioner of Internal Revenue of December 22, 1942.

134 16. Subsequently the Commissioner made assessments against the plaintiff aggregating $3,979.43 as the amounts due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to

the taxes due under Section 1700 of the Internal Revenue Code on the amounts paid as admissions to the bathing beach of the plaintiff during the years 1942, 1943, and 1944, plus interest on the principal amount of the tax and the amounts due under Section 3655 (b) of the Internal Revenue Code for failure to pay said tax on damand. This aggregate amount was paid on May 15, 1945. A claim for refund of this amount was filed with the defendant on June 29, 1945 and was rejected by letter dated January 11, 1946.

17. Subsequently the Commissioner made an assessment against the plaintiff of $2,103.30 as the amount due from the plaintiff under the provisions of Section 1718 of the Internal Revenue Code with respect to the taxes under Section 1700 of the Internal Revenue Code on the amount paid as admissions to the bathing beach of the plaintiff during 1945. This amount was paid on November 20, 1945. A claim for refund of this amount was filed with the defendant on December 19, 1945 and was subsequently rejected.

Conclusions of Law.

1. It is unnecessary to consider whether the operation of a public bathing beach is a governmental or proprietary function, since the tax was levied not upon plaintiff's operation of the beach or upon its property but upon the members of the public who paid the charge levied by the plaintiff for the use of the beach. The constitutional question of the immunity of a state and its subdivisions from the federal taxing power need not therefore be determined.

2. The provisions of Section 1715 and 1716 of the Internal Revenue Code imposing upon state and local government officials and employees the duty of assisting in the collection of an admissions tax does not violate the Constitution of the United States.

3. Under the facts of this case, the charge assessed by the plaintiff, whether for "admission" to, or for the "use" of, its publicly owned and operated bathing beach is not an admission charge within Section 1700 of the Internal Revenue Code, but is a method of imposing a use tax upon those members of the public who use the beach and its facilities.

Judgment.

This cause having come on for trial, and the court having considered the stipulation of facts and the other evidence adduced at the trial, and having herewith entered its findings of fact and conclusions of law,

It Is Therefore Ordered and Adjudged that plaintiff recover of the defendant the sum of $6,082.73, with interest on $3979.43 thereof from May 15, 1945 and on $2103.30 thereof from November 20, 1945 at the rate of six percent per annum.

Enter:
Campbell
U.S.D.J.

September 29, 1947.

135 And on the same day, to-wit, the 29th day of September, 1947, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to-wit:

136 In the District Court of the United States.

* * (Caption—43 C 318) * *

This cause having been heretofore taken under advisement on the motion of the defendant for a new trial after due deliberation and the Court being fully advised in the premises it is

Ordered that said motion for a new trial be and it is hereby denied.

137 And afterwards on, to-wit, the 26th day of November, 1947 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Appeal in words and figures following, to-wit:

138 IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Wilmette Park District, a Municipal corporation,
Plaintiff,
vs.
Nigel D. Campbell, Collector of Internal Revenue,
Defendant.
} No. 43 C 318.

NOTICE OF APPEAL.

Notice is hereby given that Nigel D. Campbell, Collector of Internal Revenue for the First District of Illinois, the defendant above named, by his attorney, Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on September 29, 1947, in favor of the plaintiff and against the defendant.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney,
Attorney for Defendant.

139 State of Illinois }
County of Cook } ss.

William Sheehan, being first duly sworn, on oath deposes and says that he is employed as Clerk in the office of the United States Attorney at Chicago, Illinois; that on the 26th day of November 1947 he placed a copy of the foregoing

Notice of Appeal in a Government franked envelope addressed to the following:

Mr. Henry J. Brandt,
c/o Poppenhusen, Johnston, Thompson
and Raymond,
11 S LaSalle Street,
Chicago, Illinois,

and that he deposited said envelope, so addressed and containing said copy of Notice of Appeal, in the United States Mail Chute located in the United States Courthouse, Chicago, Illinois, on said date.

William Sheehan.

Subscribed and sworn to before
me this 26 day of November 1947.
Anna L. Minahan
(Seal) *Notary Public*

(Attached Hereto Is The Following Certificate):

140 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—43 C 318) * *

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 26th day of November, 1947, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Henry J. Brandt
Poppenhusen, Johnston, Thompson and
Raymond
Chicago 3, Illinois

(Seal) Roy H. Johnson
Roy H. Johnson, Clerk.

143 And afterwards on, to-wit, the 20th day of January, 1948 came the Defendant-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Statement Of Points in words and figures following, to-wit:

144 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—43 C 318) * *

DEFENDANT-APPELLANT'S STATEMENT OF POINTS.

To The Clerk Of The United States District Court For The Northern District Of Illinois:

You are hereby notified that the defendant-appellant intends to rely in his appeal on the following points:

The District Court erred —

(1) In not granting the defendant's motion for judgment.
(2) In not granting the defendant's motion for new trial.
(3) In not making and entering all of the stipulated facts as findings of fact as proposed by the defendant.
(4) In not making and entering the conclusions of law proposed by the defendant.
(5) In entering findings of fact Nos. 10 and 11.
(6) In the conclusions of law contained in paragraphs Nos. 1, 2 and 3 of conclusions of law entered by the court.
(7) Entering judgment for the plaintiff.

Otto Kerner, Jr.
United States Attorney,
Attorney for Defendant-Appellant.

Received Copy of the foregoing Defendant-Appellant's Statement of Points this 20th day of January, 1948.

Henry J. Brandt
Henry J. Brandt
Attorney for Plaintiff-Appellee.

145 And on the same day, to-wit, on the 29th day of December, 1947 being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to-wit:

146 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

ORDER.

On stipulation of the parties hereto, by their respective attorneys, and the Court having jurisdiction and being fully advised in the premises

It Is Ordered that the time within which the defendant-appellant may complete and docket his record on appeal in the above case be, and it is hereby, extended to and including Februery 24, 1948.

Dated: December 29, 1947.

Enter:

Barnes

Judge.

147 And on the same day, to-wit, the 20th day of January, 1948 came the Defendant-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Designation Of Contents Of Record On Appeal in words and figures following, to-wit:

148 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—43 C 318) * *

APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

To The Clerk Of The District Court Of The United States For The Northern District Of Illinois, Eastern Division:

You are hereby requested to include in the record on appeal herein—

(1) The complete record and all the proceedings and evidence in this case.

(2) This designation of the contents of the record on appeal.

This transcript is to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit, and is to be filed in the office of the Clerk of said Circuit Court of Appeals at Chicago, Illinois.

Dated this ..... day of January, 1948.

Otto Kerner, Jr.
United States Attorney
Attorney for Defendant-Appellant

149 Received copy of the foregoing Appellant's Designation of Contents of Record on Appeal this 20th day of January, 1948.

Henry J. Brandt
Henry J. Brandt
Attorney for Plaintiff-Appellee.

152 Northern District of Illinois } ss.
Eastern Division

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this court in the cause entitled: *Wilmette Park District, a Municipal corporation, Plaintiff*, vs. *Nigel D. Campbell, Collector of Internal Revenue, Defendant*, No. 43 C 318, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the original exhibits numbered 1 and 2 which are incorporated herein by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 13th day of February, 1948.

(Seal) Roy H. Johnson
Clerk.

153 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For The Seventh Circuit.

Wilmette Park District,
a Municipal corporation,
Plaintiff-Appellee,
vs.
Nigel D. Campbell, Collector of
Internal Revenue,
Defendant-Appellant.

No. 9567

STIPULATION.

(Filed Mar 16, 1948—Kenneth J. Carrick, Clerk)

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the transcript of the record to be printed herein, be limited to the following:

1. Amended and Supplemental Complaint filed on April 2, 1946.
2. Answer to Amended and Supplemental Complaint, filed May 20, 1946.
3. Defendant's Motion for Judgment filed on December 4, 1946.
4. Stipulation of Facts and Exhibits thereto received in evidence December 4, 1946.
5. Transcript of Proceedings before Judge Campbell on December 4, 1946.
6. Order of December 4, 1946 showing cause called for trial; evidence heard for plaintiff; ruling reserved on defendant's motion for judgment; defendant rests upon the stipulation of facts; briefs to be filed and cause to be taken under advisement without further argument.

7. Memorandum Opinion dated July 25, 1947, finding for plaintiff.

154 8. Defendant's Motion for New Trial filed August 14, 1947.

9. Order dated August 14, 1947 granting leave to defendant to file Motion for New Trial and setting Motion for hearing on September 12, 1947.

10. Plaintiff's Proposed Findings of Fact and Conclusions of Law filed September 8, 1947.

11. Defendant's Proposed Findings of Fact and Conclusions of Law filed September 8, 1947.

12. Defendant's Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law, filed September 8, 1947.

13. Order entered September 12, 1947, motion of defendant for new trial taken under advisement, to be ruled on at time Court rules on Findings of Fact and Conclusions of Law.

14. Answer to Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law filed September 15, 1947.

15. Findings of Fact and Conclusions of Law and Judgment Order entered September 29, 1947.

16. Order dated September 29, 1947 denying defendant's motion for new trial.

17. Notice of Appeal filed November 26, 1947.

18. Order on stipulation of parties extending time to February 24, 1948 for completing and docketing record on appeal.

19. Defendant-Appellant's Designation of Contents of Record on Appeal filed January 20, 1948.

20. Defendant-Appellant's Statement of Points filed January 20, 1948.

It is further stipulated and agreed that any portion of the record in this case, not printed pursuant to this stipulation, may be considered by the Circuit Court of Appeals in the original form if the members of said Court desire so to do.

It is further stipulated and agreed that the parties
155 hereto may use any part of the original record and refer to the same in their briefs whether it appears in the printed record or not.

/s/ G. H. Hennessey, Jr.
/s/ Henry J. Brandt
Counsel for Plaintiff-Appellee.
/s/Otto Kerner, Jr.
Counsel for Defendant-Appellant.

Approved:
William M. Sparks, C. J.

Mar. 16, 1948

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of the record filed in this office on August 5, 1948, in:

Cause No. 9567.

Wilmette Park District,
Plaintiff-Appellee,

vs.

Nigel D. Campbell, Collector of Internal Revenue,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 19th day of April, A. D. 1949.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the seventh day of October, in the year of our Lord one thousand nine hundred and forty-seven, and of our Independence the one hundred seventy-second.

Wilmette Park District, *Plaintiff-Appellee,* vs. Nigel D. Campbell, Collector of Internal Revenue, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

9567

And afterward, to-wit, on the fourteenth day of February, 1948, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Case No. 9567.

Harrison, Collector of Internal Revenue,
Appellant,

vs.

Wilmette Park District,
Appellee.

The Clerk will enter our appearances as Counsel for the Appellant.

Theron L. Caudle,
Assistant Attorney General.

Sewall Key,
Special Assistant to the Attorney General.

Endorsed: Filed Feb. 14, 1948. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the eighteenth day of February, 1948, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 9567.

Wilmette Park District,
Plaintiff-Appellee,

vs.

Nigel D. Campbell, Collector, etc.,
Defendant-Appellant.

The Clerk will enter our appearance as counsel for Appellee.

Henry J. Brandt,
11 S. La Salle St.

Gilbert H. Hennessey, Jr.,
11 S. La Salle St.

Poppenhusen, Johnston, Thompson & Raymond,
11 S. La Salle St.

Endorsed: Filed Feb. 18, 1948. Kenneth J. Carrick, Clerk.

And on the same day, to-wit, on the eighteenth day of February, 1948, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellant, which said appearance is in the words and figures, following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 9567.

Feb. 17, 1948.

Wilmette Park District, a Municipal corporation,
Plaintiff-Appellee,

vs.

Nigel D. Campbell, Collector of Internal Revenue,
Defendant-Appellant.

The Clerk will enter their appearance as counsel for Defendant-Appellant.

Otto Kerner, Jr.,
450 U. S. Courthouse,
Chicago,
United States Attorney.

LeRoy R. Krein,
450 U. S. Courthouse,
Chicago,
Asst. United States Attorney.

Endorsed: Filed Feb. 18, 1948. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the twenty-fourth day of January, 1949, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 9567.

Wilmette Park District,
Plaintiff-Appellee,

vs.

Nigel D. Campbell, Collector of Internal Revenue,
Defendant-Appellant.

The Clerk will enter their appearance as counsel for Defendant-Appellant.

Arthur L. Jacobs,
U. S. Dept of Justice,
Tax Division,
Washington, D. C.

Endorsed: Filed Jan. 24, 1949. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the twenty-sixth day of Janu-
y, 1949, the following further proceedings were had and
tered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

January 26, 1949.

efore:

Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Wilmette Park District, *Plaintiff-Appellee,* vs. Nigel D. Campbell, Collector of Internal Revenue, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

67

Now this day come the parties by their counsel, and this
use comes on to be heard on the transcript of the record
d the briefs of counsel and on oral argument by Mr.
thur L. Jacobs, counsel for the appellant, and by Mr.
nry J. Brandt, counsel for the appellee, and the Court
es this matter under advisement.

And afterwards, to-wit, on the second day of February, 1949, there was filed in the office of the Clerk of this Court a stipulation re admission tax, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Wilmette Park District,
Appellee,
vs.
Nigel D. Campbell, Collector of Internal Revenue,
Appellant.
} No. 9567.

STIPULATION.

It is hereby stipulated and agreed by and between the undersigned that the Wilmette Park District did not during the years 1942, 1943, 1944 or 1945 collect from purchasers who paid admissions to its bathing beach facilities any amount to cover the admissions tax alleged to have been imposed by the Admissions Tax Act (53 Stat. 189, as amended, c. 10, Title 26, U. S. C. A., Sec. 1700).

Otto Kerner, Jr.,
L. R. K.
United States Attorney,
Attorney for Appellant.

Henry J. Brandt,
Attorney for Appellee.

Endorsed: Filed Feb. 2, 1949. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the twenty-third day of February, 1949, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 9567. October Term, 1948, January Session, 1949.

Wilmette Park District, *Plaintiff-Appellee,* *vs.* Nigel D. Campbell, Collector of Internal Revenue, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

February 23, 1949.

Before MAJOR, *Chief Judge,* MINTON, *Circuit Judge,* and LINDLEY, *District Judge.*

MAJOR, *Chief Judge.* This is an appeal from a judgment in favor of the plaintiff, entered September 29, 1947, in an action to recover certain taxes theretofore paid to the defendant as the result of an alleged illegal levy and assessment. The taxes involved are referred to as an "admissions tax" and include the years 1942 through 1945.

The findings of fact are predicated in the main upon a stipulation of the parties and are not in dispute. Plaintiff is a body politic and corporate, organized in 1908 under the laws of Illinois. It is administered by a Board of Commissioners elected by the people residing in the district. Plaintiff, a park district, consists of an area of approximately 2.8 square miles located within the incorporated area of the Village of Wilmette, Cook County, Illinois, which village has a population of approximately 20,000. Included within the park district is Washington Park, which extends along the shore of Lake Michigan for approximately

three-fourths of a mile. The land area of this park was acquired partly by grant from the State of Illinois, partly by purchase and partly by the exercise of the right of eminent domain. For many years, a portion of this park adjacent to Lake Michigan has been used as a bathing beach during the summer months.

Plaintiff during the involved years made two types of charges to users of the beach and beach facilities: (1) a flat rate for a season ticket issued on either an individual or family basis, and (2) a single daily admission charge of 50¢ on week days and $1.00 on Saturdays, Sundays and holidays, for which no tickets were issued. Plaintiff supplied for use in conjunction with the bathing beach a bathhouse containing clothing lockers, toilets and washrooms, an automobile parking area, life-saving equipment, flood lighting, drinking fountains, showers, spectator benches, bicycle riding, first-aid personnel and supplies, and it employed in connection with the operation and maintenance of the bathing beach, a beach superintendent, a secretary, beach maintenance labor, life guards, check room and gate check workers, general office workers and policemen. While the beach facilities were utilized principally by the residents of the community, the facilities were available to and were utilized by non-residents.

The charge made by plaintiff for the use of the beach and beach facilities was made to cover maintenance, operation and some capital improvements. Over the years, the charge for the use of the beach and beach facilities was intended merely to approximate these costs and not to produce net income or profit to the plaintiff.

From Gary, Indiana, to Lake Bluff, Illinois, there were twenty-nine municipally operated bathing beaches, some of which did and some of which did not charge admission. From South Chicago to Highland Park, Illinois, there were fifteen bathing beaches located on Lake Michigan operated by private persons for profit, of which nine charged admissions and six were operated by hotels and clubs for the use of their patrons, residents and members, without an express or specific admission charge.

On July 24, 1941, the Collector of Internal Revenue notified plaintiff to collect an admission tax on all bathing beach tickets sold on and after July 25, 1941. This the plaintiff refused to do, and subsequently the United States Commissioner of Internal Revenue assessed and collected from plaintiff the amount of the admissions tax claimed

to be due on the amounts paid as admissions to plaintiff's bathing beach during the years 1942 through 1945. Claims for refund of such amounts were rejected and the instant suit was instituted.

Plaintiff, in support of the judgment, makes two contentions, (1) that the charge which it made to those using its beach was not for admission subject to tax within Sec. 1700 of the Internal Revenue Code, and (2) that the imposition of the tax was unconstitutional and void. The court below agreed with the plaintiff as to its first contention and its decision was predicated on that basis.

Sec. 1700 of the Internal Revenue Code (26 U. S. C. A. 1946 ed.) provides, "There shall be levied, assessed, collected, and paid * * a tax * * of the amount paid for admission to any place, including admission by season ticket or subscription," and that the tax imposed "shall be paid by the person paying for such admission." Sec. 1715 provides, "Every person receiving any payments for admissions * * subject to the tax imposed by section 1700 * * shall collect the amount thereof from the person making such payments," and that the taxes so collected "shall be paid to the collector * * *."

Sec. 101.2 of Treasury Regulation 43 provides, "The tax is imposed on 'the amount paid for admission to any place,' and applies to the amount which must be paid in order to gain admission to a place * *. The term 'admission' means the right or privilege to enter into a place," and Sec. 101.3 of the same Regulation provides, "The tax under section 1700 (a) of the Code is on the amount paid for admission to any place. 'Place' is a word of very broad meaning, and it is not defined or otherwise limited by the Code. But the basic idea it conveys is that of a definite inclosure or location. The phrase 'to any place' therefore, does not narrow the meaning of the word 'admission,' except to the extent that it implies that the admission is to a definite inclosure or location."

Thus it seems clear that the charge which plaintiff makes upon those who enter its bathing beach comes squarely within the statutory definition, as well as that of the Regulation, of the term "admission." Even if it be true, as argued by the plaintiff, that the charge is essentially for the use of the facilities which plaintiff provides, the fact remains that such facilities cannot be utilized until entrance is made and that the latter purpose is accomplished only by payment of the admission charge. Moreover, the person

after entering the place has the option of using the facilities or not as such person sees fit. The court below expressed the view that the charge made by plaintiff was a use rather than an admission tax, but at the same time stated, "If a public beach is operated for profit, the charge for tickets would not be a use tax but an admission within the meaning of section 1700 of the Internal Revenue Code." It was on this basis that the court distinguished *Allen* v. *Regents*, 304 U. S. 439, and it is upon the same basis that plaintiff here attempts to distinguish the *Allen* case and also the decision of this court in *Exmoor Country Club* v. *United States*, 119 F. 2d 961.

In our view, neither of these cases can properly be thus distinguished. Certainly it cannot be contended that the profit element was a critical or determining factor in either. In fact, these cases furnish strong support for the defendant's contention. More than that, we think without the aid of such authorities that plaintiff's contention is not tenable. A holding that the question for decision turns upon the contingency of a profit would lead to an incongruous result. For instance, with two beaches operated side by side in the same manner as plaintiff's beach was operated, one at a loss and the other at a profit, the entrance charge to the former would be characterized as a use tax and the entrance charge to the latter as an admission charge. Under such a theory, the patrons of the former would escape the tax, while those of the latter would be liable. And this arbitrary distinction would arise not only as to beaches, whether publicly or privately operated, but to any other place where a charge was made for entrance and wherein facilities were furnished for the use or enjoyment of those who entered.

While it is not of any great importance, it is pertinent to note that the plaintiff in its complaint relied solely on the unconstitutionality of the tax. The theory that the charge made by the plaintiff was not for admission to its beach and therefore not liable for the tax was apparently evolved during the trial. The court took note of the situation and held, no doubt correctly, that the plaintiff had a right to amend its complaint to conform to the proof. The only point to this situation is that the plaintiff when it filed its complaint evidently did not have any confidence in the theory on which the court decided in its favor. In our view, the court's decision in this respect was erroneous.

The lower court did not decide the constitutional issue involved Plaintiff's contention in this respect, briefly stated, is (1) that its acquisition and maintenance of a bathing beach constitutes the exercise of a governmental function and is immune from federal taxation, (2) that the duty of collecting federal taxes cannot be imposed by Congress upon elected Commissioners of a local governmented body and cannot make the costs of collecting the same a charge upon general tax revenues, and (3) that in view of the fact that the Commissioners did not collect the admission tax from beach patrons, its payment constitutes a burden upon plaintiff's tax revenues. As to points (1) and (2), we think every argument advanced by the plaintiff is answered and controlled by *Allen* v. *Regents, supra.* In that case the court sustained the constitutionality of the federal admissions tax when applied to football games conducted by state collegiate institutions. The state contended, as does the plaintiff here, that the tax is an unconstitutional interference with and burden upon an essential governmental function of the state. The court in rejecting that contention made the following statement equally relevant to the instant situation (page 449):

> "For present purposes we assume the truth of the following propositions put forward by the respondent: That it is a public instrumentality of the state government carrying out a part of the State's program of public education; that public education is a governmental function; that the holding of athletic contests is an integral part of the program of public education conducted by Georgia; that the means by which the State carries out that program are for determination by the state authorities, and their determination is not subject to review by any branch of the federal Government; that a state activity does not cease to be governmental because it produces some income; that the tax is imposed directly on the state activity and directly burdens that activity; that the burden of collecting the tax is placed immediately on a state agency. The petitioner stoutly combats many of these propositions. We have no occasion to pass upon their validity since, even if all are accepted, we think the tax was lawfully imposed and the respondent was obligated to collect, return and pay it to the United States."

Plaintiff makes a feeble effort to distinguish this case, but in our judgment without success. It is claimed in that

case that the venture was operated at a profit and that the payment of the tax as well as the expenses of collection merely reduced the net profits and therefore did not infringe upon the tax revenues of the state. As already noted, we do not understand that decision to depend upon the issue of profit, and we are of the view that immunity from federal taxation cannot be made to rest upon such a variable factor.

It is true the *Allen* case is distinguished on the facts in one respect—that is, there, the state agency (university) issued tickets on which was stated the admission price as well as the amount of the tax, with a notice printed on the ticket to the effect that the state claimed it was not liable for the admission tax and that it would be retained by the state unless its liability for the same was finally determined. As a result, when its liability was thus determined, it had in its treasury the admissions tax which it had collected from patrons available for the purpose of discharging its obligations to the federal government. In contrast, plaintiff's officials refused after notice to collect the tax from its patrons. As a result, it has been compelled to resort to its general funds for the purpose of paying the tax, and we suppose that if plaintiff is not permitted to recover in the instant action, the depletion in its general funds occasioned by payment of the tax therefrom will have to be made up in some manner, presumably by a tax upon all the property of the district.

This represents the basis for the argument in support of point (3) above noted. In our view, this contention is beside the issue. We doubt if anyone would contend that the federal government could impose a tax upon the general revenue of a local government, but that has not been done. The tax was imposed upon those who paid for admission to the beach. The collection of the tax and its payment to the federal government was the only duty imposed upon plaintiff. This its officials refused to do. To permit plaintiff to escape its obligation because its elected officials refused to perform their statutory duty would in effect nullify the statute. Of course, the Commissioners had a right, as argued, to test the constitutionality of the tax, but having done so and lost, we see no reason why their error in judgment should be visited upon the federal government. The question as to where the money to pay the taxes is to be procured may be of concern as between the plaintiff and its Commissioners who refused to obey the statutory mandate,

but in our view it raises no question as between the plaintiff and the federal government.

Much is said in the briefs, especially in plaintiff's brief, relative to the decision in *New York* v. *United States*, 326 U. S. 572, which we find no occasion to discuss.

In our view, the admissions tax is constitutional and was legally imposed and collected by the defendant. It follows that the judgment of refund was erroneous. It is, therefore, reversed and remanded, with directions to enter a judgment favorable to the defendant.

And on the same day, to-wit, on the twenty-third day of February, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

February 23, 1949.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Wilmette Park District, *Plaintiff-Appellee,* vs. Nigel D. Campbell, Collector of Internal Revenue, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, and that this cause be, and the same is hereby, remanded to the said District Court with directions to enter a judgment favorable to the defendant-appellant.

And afterward, to-wit, on the ninth day of March, 1949, there was filed in the office of the Clerk of this Court a petition for rehearing, which said petition is not copied here.

And afterward, to-wit, on the eighteenth day of March, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

March 18, 1949.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Wilmette Park District, *Plaintiff-Appellee,* vs. Nigel D. Campbell, Collector of Internal Revenue, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

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It is ordered by the Court that the petition for rehearing of this cause be, and the same is hereby, denied.

And afterward, to-wit, on the twenty-third day of March, 1949, there was filed in the office of the Clerk of this Court, a motion to stay issuance of the mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 9567.

Wilmette Park District,
Plaintiff-Appellee,
vs.
Nigel D. Campbell, Collector of Internal Revenue,
Defendant-Appellant.

On appeal from the United States District Court for the Northern District of Illinois.

MOTION OF WILMETTE PARK DISTRICT, PLAINTIFF-APPELLEE, TO STAY ISSUANCE OF MANDATE.

Now comes Wilmette Park District, Plaintiff-appellee herein, by Henry J. Brandt and Gilbert H. Hennessey, Jr., its attorneys, and respectfully moves the Court as follows:

1. On February 23, 1949, this Court handed down its decision in the above entitled cause. On March 18, 1949, this Court denied Plaintiff-appellee's petition for rehearing of the cause.

2. Pursuant to Rule 25 of this Court, the mandate of this Court will issue as of course within five days from denial of the petition for rehearing.

3. Plaintiff-appellee, Wilmette Park District, respectfully requests this Court to stay the mandate herein pursuant to Rule 25 of this Court for a period of thirty (30) days so that Plaintiff-appellee may file an application for writ of certiorari to the Supreme Court of the United States to review the Court's decision herein.

Respectfully submitted,
Henry J. Brandt,
Gilbert H. Hennessey, Jr.,
Attorneys for Wilmette Park District.

Poppenhusen, Johnston, Thompson & Raymond,
Of Counsel.

Endorsed: Filed Mar. 23, 1949. Kenneth J. Carrick, Clerk.

And on the same day, to-wit, on the twenty-third day of March, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

March 23, 1949.

Before:

Hon. Otto Kerner, Circuit Judge.

Wilmette Park District, *Plaintiff-Appellee,* *vs.* Nigel D. Campbell, Collector of Internal Revenue, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

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On motion of counsel for the Plaintiff-Appellee, it is ordered that the issuance of the mandate of this Court in this cause be, and the same is hereby, stayed pursuant to the provisions of Rule 25 of the Rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of papers filed and proceedings had (excepting motions and orders relating to time for filing of briefs and briefs of counsel) in:

Cause No. 9567.

Wilmette Park District,
Plaintiff-Appellee,

vs.

Nigel D. Campbell, Collector of Internal Revenue,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 19th day of April, A. D. 1949.

(Seal)

Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 20, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.